IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2237 OF 1991

Shri Nivruttinath Yatra Khajur
Donation Trust, through its Managing
Trustees Shri Yeshwant Govind
Bawiskar, residing at Girnare,
Dist-Nashik. .. Petitioner.

Vs

1.The Sub-Divisional Officer, Dahanu
Division, Dahanu, Dist: Dahanu.
2. Kalu Soma Khatade, since deceased
through his heir and L.R.
3. Mahadu Hiru Shinde, since deceased
through his heirs and L.Rs
3-A Sakharam Mahadu Shinde,
3-B Deoram Mahadu Shinde,
r/o At & Post Kelghar, Taluka Jawahar,
Dist-Thane. .. Respondents.

Ms.Vandana Deshpande, for the petitioner.
Mr A.H.Palekar, AGP for the respondent-State.
Respondents are served.
CORAM : D.B.Bhosale, J.
DATE : 29th October, 2004

ORAL JUDGMENT :

1. Petitioner-trust has filed the present writ petition under Article 227 of the Constitution of India against the concurrent findings recorded by the Sub-Divisional Officer, Dahanu Division, Dahanu and the Maharashtra Revenue Tribunal, Bombay, by which their application filed under section 88-B of Bombay Tenancy and Agricultural lands Act (for short,"the Tenancy Act") seeking exemption certificate has been rejected. The Sub Divisional Officer rejected their application by his order dated 7.8.1989 holding that the trust was registered on 8.5.1969 while the respondent-tenant became the deemed purchaser on 1.4.1957 and in view thereof the trust was not entitled for exemption certificate under section 88-B of the Tenancy Act. The said finding of the SDO was upheld by the Maharashtra Revenue Tribunal by its order dated 31.7.1990.

2. The case set up by the petitioner is that the lands in dispute were originally owned by one Namdeo Shimpi. It is not clear from the record that when did the lands, in question, were transferred to the trust. The petitioner-trust claim the ownership of the lands from the date of their registration, viz. 8.5.1969. They applied for exemption certificate under section 88-B of the Tenancy Act on 23.6.1972. Before the SDO and the

MRT and also in the present petition, a categoric statement has been made by the petitioner-trust that Namdeo Shimpi, who was the landlord of the suit lands, was blind and, therefore, the tillers' day was postponed. He expired on 24.7.1976. Prior to that on 24.10.1971, the proceedings under section 32-G were dropped since Namdeo Shimpi was disabled landlord. After the death of Namdeo Shimpi, the proceedings under section 32-G were once again initiated and the purchase price came to be fixed by the ALT on 25.3.1980. Against that order, the trustees, in their individual capacity, filed the two appeals, bearing Nos. 2/83 and 4/83, which were allowed by the SDO and the matter was remanded to the ALT for fresh enquiry under section 32G. The fresh enquiry was, however, not held. In view of the proceedings initiated by the trust seeking exemption certificate under section 88-B of the Tenancy Act, the proceedings under section 32-G were stayed by the ALT. The petitioner has also stated in the writ petition that one Ambabai Ramchandra Shimpi was the original landlady of the lands in question, who gifted the lands by the Gift Deed dated 8.9.1926 for distribution of Khajur from the income of the suit lands to Saints.

3. Against the backdrop of the facts stated above, I heard the learned counsel appearing for the parties for

quite some time, perused the impugned orders and the other material placed before me. The only grievance made by Ms Deshpande, learned counsel for the petitioner, was that the tillers' day was postponed in view of the fact that Namdeo Shimpi was the disabled landlord and, therefore, the tenant cannot be said to have acquired any right under section 32-G on 1.4.1957. She further submitted that though the trust came to be registered in 1969 they had applied for its registration in 1952 itself and, therefore, the trust should deem to have been registered in 1952 itself and as a result of which the tenant cannot be said to have had become the deemed purchaser on 1.4.1957.

4. The law is well settled that a trust cannot claim exemption certificate under section 88-B in respect of the lands which had already became the property of its tenant before the right of exemption was acquired by the trust. That is why the trust in the present case, having become entitled to claim exemption under section 88-B, for the first time in 1969, cannot get exemption in respect of a land which had gone into the ownership of the respondent-tenant on 1.4.1957. This position in law is settled by this Court in **Laxminarayan Temple, Kothure Vs. Laxman Mahadu Chandore, AIR 1970 Bombay 23**. In yet another judgment in **Chhatrapati Charitable**

Devasthan Trust Vs. Parisa Appa Bhoske and ors, 1979 Mh.L.J.163, this Court was considering the similar submissions as advanced by Ms Deshpande, learned counsel for the petitioner. This Court after considering the provisions of sections 18,19,20 and 21 of the Bombay Public Trusts Act, 1950 (for short, "the Trust Act") observed that "if these provisions are read together, the trust cannot be said to be registered merely when an application under section 18 is filed. On the contrary, registration is effected only after the order is passed by the competent authority under section 20 and the entry is taken in the register". In the present case, admittedly, the trust was registered in 1969 and in view thereof the trust cannot claim that the date of registration relates back to the date of their application seeking registration of the trust. In the said judgment, this Court reiterated the law laid down in the case of Laxminarayan Temple Kothure Vs. Laxman Mahadu Chandore. A categoric finding has been recorded in the said judgment that the trust was not entitled to apply for exemption till 31.5.1959, the date of registration of the trust in that petition, since before that on 1.4.1957 the tenant had become the owner of the lands. It was further observed that the order of registration of the trust could not have the effect of extinguishing the tenant’s vested right nor of reviving

the extinguished or lost claim of the trust. In any case, the trust was not entitled to exemption under section 88-B in respect of the lands which were no longer owned by it. In view of the well settled position in law, in my opinion, the trust, in the present case, is not entitled for exemption certificate under section 88-B, since the respondent-tenant on 1.4.1957 had become the owner of the lands. The right of the tenant did not get extinguished on the date of registration of the trust in 1969.

5. It is not clear from the facts of the case that when did the lands in question become the property of the trust. A categoric case set up by the trust is that Namdeo Shimpi was the landlord and since he was the disabled landlord, the tillers' day was postponed as contemplated under section 32-F of the Tenancy Act. Namdeo Shimpi expired on 24.7.1976 while the trust was registered on 8.5.1969. It is also not clear the basis on which the trust claims that the lands in dispute became the property of the trust on its registration in 1969. Ms Deshpande, learned counsel for the petitioner, also could not offer any explanation as to how and when the lands in question became the property of the trust. Admittedly, Namdeo Shimpi was the landlord. The trust cannot claim exemption certificate in respect of the

lands in question under section 88-B even if it is assumed that the income of the lands was being appropriated for the purposes of the trust. The basic requirement for getting exemption certificate under section 88-B is that the lands, in respect of which the exemption was sought, should be the property of the trust. Looking at the case from any angle, in my opinion, the trust is not entitled for exemption certificate under section 88-B of the Act. No case for interference in the orders impugned is made out. In the result, the writ petition is dismissed. Rule stands discharged.

(D.B.Bhosale, J.)

jwp2237-91

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.2237 OF 1991

Date of Judgment:

29th October, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?